



DRAFT 2011-LAz-3: Business Entity Changes

2011-2012 General Assembly

Committee: Revenue Laws Study Committee
Introduced by:
Analysis of: Draft Proposal
2011-LAz-3

Date: December 1, 2010
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SUMMARY: *This legislative proposal makes changes to the business entity ownership requirements for qualification of land at its present-use value so that the requirements are met when the current owner of the land shares members in common with the prior owner of the land.¹*

CURRENT LAW: Since 1973, farmland (agricultural land, horticultural land, and forestland) has been appraised and assessed at its present-use value as opposed to fair market value for property tax purposes if the farmland meets certain ownership, size, and use requirements. Farmland owned by a business entity meets the ownership requirements if the land was owned by the business entity or one of its members for the four years immediately preceding January 1 of the year for which the benefit is claimed. Prior to 2008, the members of the business entity had to be individuals. In 2008, the Revenue Laws Study Committee proposed legislation to broaden the ownership requirements so that farmland could be owned by a business entity whose membership includes modern estate planning vehicles such as a family limited partnership, a family limited liability company, or a trust.² S.L. 2008-146 alleviated problems tax assessors were having with recognizing these types of ownership. Now, for example, if the farmland is owned by a business entity, the members of the business entity are no longer restricted to individuals but can include trusts and other business entities.

BILL ANALYSIS: The 2008 changes to the present-use value (PUV) statutes focus on problems the tax assessors were having with recognizing types of ownership. Ownership is determined on the basis of the name on the deed but does not always consider real parties in interest.

Recently, counties have received applications where farmland has been owned as follows:

- Farmland owned by ABC Partnership for past four years applies for PUV status.
- The partners of ABC Partnership are Tom, Dick, and Harry.
- The previous owner of the farmland was XYZ Partnership.
- The partners of XYZ Partnership were also Tom, Dick, and Harry.
- Counties have denied PUV status to the farmland based upon the language in G.S. 105-277. 3(b1): The farmland had not been owned by its current owner, ABC Partnership, for four years immediately preceding the application, nor was the land owned by a partner of ABC Partnership.

The proposal would allow the business entity ownership requirements to be satisfied when the business entity that currently owns the farmland shares one or more members in common with the business entity that previously owned the farmland. For example, because one or more partners of the partnership that currently

¹ A "business entity" is defined as a corporation, general partnership, limited partnership, or limited liability company. A "member" is defined as a shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

² When the membership of a business entity includes a business entity or trust, then the individual members of the business entity and the individual beneficiaries of the trust are deemed to be indirect members of the qualified business entity.

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owns the farmland are the same partners of the partnership that previously owned the farmland, the ownership requirement would be met. In this example, the real parties in interest have not changed.

EFFECTIVE DATE: This act becomes effective for taxable years beginning on or after July 1, 2011. However, applications filed beyond the listing period (January 1-January 31) would be accepted up to and through September 1, 2011, so that an owner may benefit from the property tax relief during the July 1, 2011 tax year.

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